

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROSE MARY WHITE,

Defendant-Appellee.

UNPUBLISHED

July 11, 2000

No. 223430

Wayne Circuit Court

LC No. 99-500044

Before: Jansen, P.J., and Hood and Saad, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court's order affirming the district court's dismissal of this case based on the prosecution's failure to establish the corpus delicti of a homicide independent of defendant's confession. We reverse the circuit court's order, and remand this matter to the district court for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with second-degree murder, MCL 750.317; MSA 28.549, in the death of her two-year-old grandson, who died while in her care. At the preliminary examination, the parties stipulated that the medical examiner had concluded that the child died of methadone intoxication, and that the death was accidental. When the prosecution attempted to introduce a statement taken from defendant, defendant objected on the ground that the prosecution had not established that the death resulted from some criminal agency. The prosecution maintained that the criminal agency was defendant's negligence in handling the methadone. The district court indicated that no evidence, apart from defendant's statement, showed how the child obtained the methadone, concluded that the corpus delicti was not established, and dismissed the charge. The circuit court affirmed the district court's decision.

The purpose of a preliminary examination is to determine if probable cause exists to believe that a crime was committed and that the defendant committed it. *People v Fiedler*, 194 Mich App 682, 689; 487 NW2d 831 (1992); MCL 766.13; MSA 28.931; MCR 6.110(E). During a preliminary

examination, the prosecution must produce evidence of each element of the crime charged, or evidence from which the elements can be inferred. *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989).

The elements of second-degree murder are: (1) a death; (2) caused by an act of the defendant; (3) with malice; and (4) without justification or excuse. Malice is the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and willful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). The corpus delicti of murder requires proof of both a death and of some criminal agency that caused the death. The proof must consist of evidence independent of the confession of the accused. *People v McMahan*, 451 Mich 543, 549; 548 NW2d 199 (1996). The corpus delicti may be established by a preponderance of direct or circumstantial evidence, and from reasonable inferences drawn from the evidence. *People v Brasic*, 171 Mich App 222, 227; 429 NW2d 860 (1988).

Plaintiff argues that the circuit court erred by affirming the district court's dismissal of this case. We agree, reverse the decision of the circuit court, and remand this matter to the district court for further proceedings consistent with this opinion. The independent evidence showed that the two-year-old child died of methadone intoxication, an unnatural death, while in the care of defendant, a methadone user. The medical examiner deemed the death an accident; however, no authority holds that the characterization of a death by a medical examiner necessarily negates a reasonable inference that the death resulted from some criminal agency. Moreover, gross negligence resulting in an unintentional death, without malice, constitutes some criminal agency for the offense of involuntary manslaughter. MCL 750.321; MSA 28.553. From the independent evidence produced at the preliminary examination, a reasonable inference could be drawn that the child ingested the methadone as a result of either intentional administration or negligence. *Brasic, supra*. The prosecution established the corpus delicti of the homicide with evidence independent of defendant's confession, and thus should have been allowed to introduce the substance of the confession. *McMahan, supra*.

The circuit court's order is reversed, and this case is remanded to the district court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad